



# City of Boston

Public Works Department  
Permits Division  
Room 714 Boston City Hall  
Boston MA, 02201  
(617) 635-4910

## Sidewalk Café

THIS LICENSE, MAINTENANCE AND INDEMNIFICATION AGREEMENT is made as of this 1<sup>st</sup> day of May, 2000, by and between the CITY OF BOSTON, acting by and through its Public Improvement Commission, hereinafter the "City," and Burn, Inc., d/b/a Tremont 647 (hereinafter the "Licensee"), with a place of business at 647 Tremont Street, Boston, MA 02118, and with executive offices at the same address.

### WITNESSETH THAT:

WHEREAS, Licensee is the owner and operator of the restaurant known as the "Tremont 647," which is located at the owner's premises at 647 Tremont Street, Boston, Massachusetts, Boston Proper (hereinafter the "Site"); and

WHEREAS, the Licensee petitioned the Public Improvement Commission for the issuance of a license for the purpose of placing a **[temporary]** sidewalk café (hereinafter "Café") directly in front of the Site; and

WHEREAS, the Public Improvement Commission, by a vote taken at the Public Hearing held on November 18, 1999, approved Licensee's petition for a license; and

WHEREAS, the Licensee's engineer, Charles Chaloff Consulting Engineers, Inc., 374 Congress Street, Boston, Massachusetts 02210 ("Charles Chaloff"), has, as required by the Licensor, provided the Licensor with a letter that states that no area ways exist below the Site; and

WHEREAS, the Licensor requires that this Agreement be entered into as a condition of the license for the Café.

**NOW THEREFORE**, in consideration of the license given by the Licensor to the Licensee, the Licensee agrees as follows:

### **I. TERM OF LICENSE:**

Unless otherwise terminated by the Licensor, the license to have a Café on the Licensor's property shall be temporary, and the license will be issued for the period of May 1, 2000 to October 31, 2000.



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### II. LICENSED AREA:

#### 1. Location:

- a. The Café shall be located directly in front of and contiguous to the Site. The exact location of the Café is shown on an architect's plan entitled #647 Tremont Street Sidewalk Café, prepared by Thomas R. Huth, and dated November, 1999, which plan is on file with the office of the Public Improvement Commission for the City of Boston.
- b. The Licensee shall have the obligation to prevent encroachment onto space not covered by this license. To accomplish this goal, the Licensee shall install a non-movable and temporary system of enclosure around the Café, with removable bollards.

#### 2. Dimensions:

- a. The Café measures 186 square feet. At all times the Licensee shall insure that the Café extends out to the curb cut no less than six (6) feet, and no more than the area allowed by this License.
- b. The Licensee shall ensure that, at all times, there will be at least four (4) feet of sidewalk between the boundary of the Café and the tree grates, if any. If there are no tree grates or other street furniture, then there shall be at least four (4) feet of sidewalk between the boundary of the Café and the curb cut.
- c. The Licenser reserves the right to require that more than four (4) feet of sidewalk is made available during certain hours of the day, or days of the week.

#### 3. Pedestrian/Patron Access/Use:

- a. Licensee shall provide safe and adequate access to patrons making use of the Café and to pedestrians making use of the public way in or near the Café or Site.
- b. The Licensee shall ensure that no alcohol is sold or consumed outside of the Café and Site.
- c. The Café shall be constructed and maintained so as not to constitute a hazard or danger to persons making use of the Café or Site and the public way.

#### 4. Removal:

- a. The Licensee shall ensure that all structures comprising the Café, including but not limited to chairs, tables, fencing, bollards and planters will be easily removed during periods of non-use, and at the expiration of this license.
- b. The Licensee shall remove all fixtures, chairs, tables, fencing, bollards, planters and any other items related to or connected to the Café from the public way on the last effective date of this license.



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### III. FEES AND COSTS:

#### 1. To Be Paid By The Licensee:

- a. The Licensee at its own cost and expense shall maintain the Site and Café.
- b. The Licensee shall bear all financial responsibility for any and all improvements to the public way, both within and surrounding the Café, which are in the opinion of any City department or agency, required for the proper and safe operation of the Café.
- c. The Licensee shall bear all costs and expenses related to the construction and maintenance of any utilities and other amenities relative to this license and operation of the Café.
- d. The Licensee shall, prior to its entry upon, or use or occupancy of the Site, and prior to installing or constructing any part of the Café, have paid any and all fees required to be paid. No permit fees or other fees will be waived.

#### e. Monthly Rental Fee:

- (i) The license fee for the month of **XXXXXX** shall be \_\_\_\_\_ DOLLARS (\$\_\_\_\_.00). Thereafter, the monthly license fee shall be \_\_\_\_\_ DOLLARS and \_\_\_\_/\_\_\_\_. It shall be due and payable on the first day of each month.
- (ii) The **XXXX** payment is due upon the signing of this License. All subsequent payments are due on the first day of each month. If payment is not received by the 6th day of the month, the Licensor shall have the right to terminate this license, and order the Licensee to remove the Café from the Licensor's property.

#### f. Escalation Clause:

- (i) The monthly rental fee is subject to change on a yearly basis. Increase will be based on the prior year's change in the consumer price index.

#### 2. By The Licensor:

- a. The Licensor shall not be required to make any improvements to the public way that will be occupied by the Café, or expend any money for the benefit of the Licensee.



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### IV. HOURS OF OPERATION:

The *Licensing Board for the City of Boston ("Board")* shall establish the hours of operation and any other restrictions, limitations, etc. it deems appropriate. The decision of the Board is incorporated by reference, and a copy of it shall be attached hereto as Exhibit A.

### V. INDEMNIFICATION AND INSURANCE REQUIREMENTS:

1. The Licensee shall indemnify and save harmless the Licensor against all claims and demands of all persons or entities for damages, costs, expenses or compensation for, on account of, or in any way growing out of the use and occupancy by the Licensee, his patrons, and or invitees of the Site and Café, or by reason of any act or neglect of said Licensee, its officers, agents, and employees, or by any reason of any violation of any term or specification contained in this Agreement or in any license or permit necessary in the said use and occupancy of the Site or Café.
2. The Licensee shall obtain and maintain liability insurance for the period stated in Section I above. The minimum amount of insurance shall be in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. A copy of the Certificate of Insurance is attached hereto as Exhibit B.
3. Prior to the issuing of any permits by the Public Works Department, the Licensee shall provide the Licensor with an original Certificate of Insurance that names the City as an Additional Insured.

### VI. NOTICE REQUIREMENTS:

1. All notices shall be in writing and shall be by certified or registered mail, return receipt requested, addressed as follows:

If the Licensor at:

Public Improvement Commission  
c/o City of Boston Public Works Department  
City Hall-Room 714  
Boston, MA 02201  
Attention: Executive Secretary

And if to the Licensee at:

Burn, Inc.  
d/b/a Tremont 647  
647 Tremont Street  
Boston, MA 02118  
Attention: Andy Husbands



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### VII. TERMINATION:

1. Unless otherwise terminated by the Licensor, the license to have a Café on the Licensor's property shall be temporary, running from May 1, 2000 through October 31, 2000.
2. Notwithstanding any language to the contrary, the Licensor reserves the right to terminate this Agreement and to require the Licensee to remove the Café from the Site if and when it deems it necessary.

### VIII. ADDITIONAL TERMS AND CONDITIONS:

1. The Café shall be used solely for the purpose of dining. Consumption of alcoholic beverages is permissible but only if authorized by the Licensing Board.
2. The Café shall not be used solely for the purpose of serving alcohol.
3. The Licensee shall comply with all applicable federal, state and local rules, regulations and laws, and any amendments thereof.
4. In the event the Site is located within a landmarks district, the Licensee shall obtain a letter from the appropriate landmarks commission which sets forth approval of the Café and any furniture used therewith. A copy of said letter shall be attached hereto as Exhibit C.
5. If the Site is not located in a landmark district, then the Licensee shall obtain design approval from the Boston Redevelopment Authority, located on the 9th Floor of City Hall in Boston, Massachusetts. A copy of the letter is attached hereto as Exhibit C.
6. The Licensee represents that it has obtained the approval of the Commission of Persons with Disabilities. The Licensee shall provide a copy of the letter from said Commission prior to obtaining the license to operate.
7. The Licensee shall ensure that the Site remains in a clean and sanitary condition, and that the Licensee shall be solely responsible for the removal of trash from the Site.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement  
as of the day and year first above written.

CITY OF BOSTON, acting by  
and through its Public  
Improvement Commission

\_\_\_\_\_  
Joseph F. Casazza, Chairman

\_\_\_\_\_  
Michael J. Galvin, Member

\_\_\_\_\_  
Gary Moccia, Member

BURN, INC.

By: \_\_\_\_\_  
Andy Husbands  
Its President

By: \_\_\_\_\_  
Dennis A. Quilty  
Its Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant Corporation Counsel / Date



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### COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

April \_\_\_\_\_, 2000

Then appeared before me Joseph F. Casazza, Chairman of the Public Improvement Commission of the City of Boston, and acknowledged that he executed the foregoing instrument as the free act and deed of the City of Boston, acting by and through its Public Improvement Commission.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My commission expires:

### COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

April 2000 \_\_\_\_\_, 2000

Then appeared before me Michael J. Galvin, Commissioner of the Public Improvement Commission of the City of Boston, and acknowledged that he executed the foregoing instrument as the free act and deed of the City of Boston, acting by and through its Public Improvement Commission.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My commission expires:

### COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

April \_\_\_\_\_, 2000

Then appeared before me Gary Moccia, Commissioner of the Public Improvement Commission of the City of Boston, and acknowledged that he executed the foregoing instrument as the free act and deed of the City of Boston, acting by and through its Public Improvement Commission.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My commission expires:



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## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

April \_\_\_\_\_, 2000

Then appeared before me Andy Husbands and acknowledged that he executed the foregoing instrument as his free act and deed and the free act and deed of Andy Husbands.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My commission expires:

## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

April \_\_\_\_\_, 2000

Then appeared before me Dennis A. Quilty, attorney, and acknowledged that he executed the foregoing instrument as his free act and deed and the free act and deed of Dennis A. Quilty, attorney..

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My commission expires:

M066475@SD:Café Agreement/LenoxFinal